

DISTRICT OF MAINE

Civil No. 00-66-P-H

2. The motion to dismiss for so-called lack of subject matter jurisdiction, in reality a motion to dismiss for lack of standing, is **DENIED** on the condition that Swanson Ventures, LLC of Massachusetts join the action as a plaintiff with a properly amended complaint by June 23, 2000. In responding to the motion to dismiss for lack of standing, Swanson Ventures, LLC of Mississippi, the current plaintiff, has furnished an assignment from Swanson Ventures, LLC of Massachusetts of all its interest in the lawsuit, but the complaint as currently framed does not state any cause of action on behalf of Swanson Ventures, LLC of Massachusetts. Thus, there is nothing in the current complaint that is covered by the assignment.

3. The motion to dismiss as to the defendant Avian Farms, Inc. (Avian) is **DENIED**. The Complaint states that Robert Saglio is Avian's Chief Executive Officer and that at all times relevant, Saglio was acting as the actual or apparent agent of Avian. Compl. ¶¶ 4, 6. Although Robert Saglio did not specifically sign on behalf of Avian, the letter of intent expressly places obligations on Avian that the plaintiff claims were breached. The plaintiff has alleged sufficient facts to survive a motion to dismiss.

The motion to dismiss as to the members of the Saglio family is **DENIED**. The letter of intent purports to bind them all.

It is also **DENIED** as to Charoen Pokphand Group Co., Ltd. and Charoen Pokphand (USA), Inc. The letter of intent is internally inconsistent on what entity is being bound. Although the signature line has typed beneath it the name Charoen Pokphand Group, Co., Ltd., the letter is addressed to ACP Group, Inc. and refers internally to ACP Group, Inc., A.C.P. Group, ACP, and A.C.P., I cannot determine from the face of the Complaint and the letter of intent precisely what entity or entities was/were bound. As a result, the matter is inappropriate for ruling as a matter of failure to state a claim.

I also reject the asserted unenforceability of the letter of intent as a basis for dismissing the complaint. Ultimately, the letter of intent may turn out to be unenforceable. But the defendant's motion is brought under Rule 12 (b)(6), and the plaintiff has asserted that the letter of intent is binding. See Complaint ¶ 10.

The defendants would have me rule that the letter is unenforceable based solely upon its contents and not allow the plaintiff to refer to other extrinsic evidence to supply missing terms or clarify ambiguities. That is an inappropriate use of the rules of pleading. The defendants may be entitled to summary judgment or to judgment after trial, but they cannot prevent the plaintiff from referring to other evidence that might support the plaintiff's case merely because the plaintiff appended the letter of intent and did not add other documents or evidence to the complaint. I note also that the unenforceability of the letter of intent would not necessarily dispose of the counts based upon fraud (Counts 7, 11, 12) and negligent misrepresentation (Count 8).

4. Oral argument would not be helpful in the current posture of the case, and the request is **DENIED**.

So ORDERED.

DATED THIS 8TH DAY OF JUNE, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court, District of Maine (Portland)
Civil Docket for Case #: 00-CV-66

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v.

CHAROEN POKPHAN GROUP
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CHAROEN POKPHAN USA INC.
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HENRY SAGLIO
defendant

LISA M. R. MILLER, ESQ.
BARRY W. LEVINE, ESQ.
(See above)

AVIAN FARMS INC.
defendant

LISA M. R. MILLER, ESQ.
BARRY W. LEVINE, ESQ.
(See above)

ROBERT SAGLIO
defendant

LISA M. R. MILLER, ESQ.
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JOHN DOES 1-10
defendant